

## 37 CFR Ch. I (7-1-95 Edition)

## § 1.495

20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 20 months after the priority date. A copy of the notification mailed to applicant should accompany any response thereto submitted to the Office.

(4) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 20 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 20 months from the priority date will be considered to be cancelled. The 20-month time limit may not be extended.

(e) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered necessary, if the international application or other document was filed in a language other than English.

(f) The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

(g) An international application becomes abandoned as to the United States 20 months from the priority date if the requirements of paragraph (b) of this section have not been complied with within 20 months from the priority date where the United States has been designated but not elected by the expiration of 19 months from the priority date. If the requirements of paragraph (b) of this section are complied with within 20 months from the priority date but any required translation of the international application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

(52 FR 20050, May 28, 1987, as amended at 53 FR 4346, Jan. 14, 1993)

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§ 1.495 Entering the national stage in the United States of America as an Elected Office.

(a) Where the United States of America has been elected by the expiration of 19 months from the priority date, the applicant must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) To avoid abandonment of the application the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date:

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office; and

(2) The basic national fee (see § 1.492(a)). The 30-month time limit may not be extended.

(c) If applicant complies with paragraph (b) of this section before expiration of 30 months from the priority date but omits:

(1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) and/or

(2) The oath or declaration of the inventor (35 U.S.C. 371(c)(4)); see § 1.497, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of 30 months after the priority date. A copy of the notification mailed to applicant should

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accompany any response thereto submitted to the Office.

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 30 months from the priority date will be considered to be cancelled. The 30-month time limit may not be extended.

(e) A translation into English of any annexes to the international preliminary examination report, if the annexes were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Translations of the annexes which are not received by the expiration of 30 months from the priority date may be submitted within any period set pursuant to paragraph (c) of this section accompanied by the processing fee set forth in § 1.492(f). Annexes for which translations are not timely received will be considered cancelled. The 30-month time limit may not be extended.

(f) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered necessary, if the international application or other document was filed in a language other than English.

(g) The documents submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

(h) An international application becomes abandoned as to the United States 30 months from the priority date if the requirements of paragraph (b) of this section have not been complied with within 30 months from the priority date and the United States has been elected by the expiration of 19 months from the priority date. If the requirements of paragraph (b) of this section are complied with within 30 months from the priority date but any required translation of the inter-

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national application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section.

(52 FR 20051, May 28, 1987, as amended at 53 FR 4347, Jan. 14, 1993)

## § 1.498 Examinations of international applications in the national stage.

(a) International applications which have complied with the requirement of 35 U.S.C. 371(c) will be taken up for action based on the date on which such requirements were met. However, unless an express request for early processing has been filed under 35 U.S.C. 371(f), no action may be taken prior to one month after entry into the national stage.

(b) A national stage application filed under 35 U.S.C. 371 may have paid therein the basic national fee as set forth in § 1.492(a)(4) if it contains, or amended to contain, at the time entry into the national stage, one or more claims which have been indicated in the international preliminary examination report prepared by the United States Patent and Trademark Office as satisfying the criteria of PCT Article 33(4) as to novelty, inventive step and industrial applicability. Such national stage applications in which the basic national fee as set forth in § 1.492(a) has been paid may be amended subsequent to the date of entry into the national stage only to the extent necessary to eliminate objections, or to cancel rejected claims. Such national stage applications in which the basic national fee as set forth in § 1.492(a)(4) has been paid will be taken up out of order.

(52 FR 20051, May 28, 1987)

## § 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).

(a) When an applicant desires to enter the national application under 35 U.S.C. 371 or § 1.485, he or she must make a declaration in accordance with (b) If the international application was made as provided



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